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OFFICE OF PETITIONS

In re Application of	:	DECISION ON PETITION
Rajan et al.	:	and
Application No. 10/073,608	:	NOTICE OF <u>NONACCEPTANCE</u> OF
Filed: February 11, 2002	:	POWER OF ATTORNEY AND
Atty Docket No. YOR920020050	:	CHANGE OF
	:	CORRESPONDENCE ADDRESS

This is a decision on the PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY UNDER 37 CFR 1.137(b) filed August 9, 2007. For the reasons stated in the decision, the petition is also being treated as a petition under 37 CFR 1.181 (no fee) to withdraw the holding of abandonment.

The petition under 37 CFR 1.181 is **DISMISSED**.

The petition under 37 CFR 1.137(b) is **GRANTED**.

The above-identified application became abandoned for failure to reply to the Notice of Non-Compliant Appeal Brief (37 CFR 41.37) mailed December 15, 2006. The Notice set a period for reply of one month from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. No reply having been received, the above-identified application became abandoned on January 16, 2007. The filing of the instant petition preceded the mailing of a courtesy Notice of Abandonment on August 14, 2007.

On petition, petitioners argue citing MPEP 1205.03 that the requirement for a corrected brief should not have been made. Petitioners request a refund of the fee for the Petition for Revival on the grounds that the requirement to correct the brief (which led to the abandonment) should not have been made. The petition fee under 37 CFR 1.137(b) is not subject to refund based on the outcome of the petition. Payment of the fee is a statutory prerequisite to consideration of the petition under 37 CFR 1.137(b).

Nonetheless, a petition under 37 CFR 1.181 requesting withdrawal of the holding of abandonment on the basis that the requirement for a corrected brief should not have been made is a no fee petition. Accordingly, the petition is first going to be considered under 37 CFR 1.181.

The facts and circumstances of the abandonment have been considered and it is concluded that withdrawal of the holding of abandonment is not warranted. It is undisputed that applicants failed to timely reply to the Notice of Non-Compliant Appeal Brief. This is controlling. To prevent abandonment of the applicants had to either get the Notice of Non-Compliant Appeal withdrawn or vacated within the extended period for reply or submit an acceptable reply. Applicants allowed the period for reply to expire and first presented their argument on this petition. As such, the abandonment is proper and will not be withdrawn.

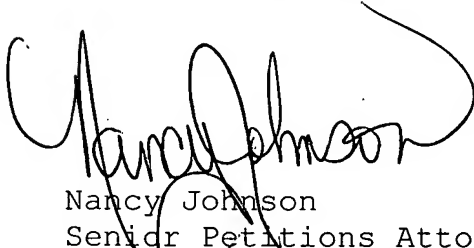
Consideration now turns to the petition under 37 CFR 1.137(b). Petitioner has satisfied the requirements of 37 CFR 1.137(b). The petition included the required reply in the form of a corrected Appeal Brief, the petition fee, and the required statement of unintentional delay.

Receipt of the Power of Attorney and Correspondence Address Indication Form filed with the petition on August 9, 2007 is acknowledged. However, the Power of Attorney and Correspondence Address change are not made of record. This form is signed by attorney Robert Trepp on behalf of International Business Machines Corporation. The 3.73(b) statement required for assignee to take this action was not received with the Power of Attorney and Correspondence Address Indication Form (and is not of record in the application). Accordingly, the request has no effect. See MPEP 324. Submission of a proper 3.73(b) statement

or a power of attorney and change of address by a proper party is required to effectuate this change.

The application file is being forwarded to Technology Center AU 2121 for consideration by the examiner of the Appeal Brief submitted on petition filed August 9, 2007.

Telephone inquiries specific to this decision should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, sweeping flourish extending from the end of the name.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions